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Sent: Tuesday, June 03, 2003 11:09 PM
To: 'nprm@atf.gov'
Subject: 'TTB Notice No. 4'

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Comments= I disagree with this proposed rule on two primary basis, one the rule will not add any significant benefit to the public and second, the proposed change in treatment of the flavored malt beverages in question to a category where they will be treated as distilled spirits for tax and production purposes will disproportionately increase the prices of these beverages. The proposed rule will not add any significant benefit to the public This notice proposes "clarify" the meaning of flavored malt beverages where the alcohol content of these beverages derive more than 51% of their alcohol content from distilled spirits additives. Referring the proposed new rule it is clear that the Alcohol and Tobacco Tax and Trade Bureau ("TTB", note TTB will be used collectively to refer to prior actions and or conduct by its predecessor, Bureau of Alcohol Tobacco and Firearms) has the authority to regulate malt beverages. The most significant regulatory impact that this new rule will have is a quasi truth in labeling requirement for producers for these products. The proposed new rule enumerates clear language that producers may and may not use with respect to the flavored malt beverages in questions; the ideal appears to avoid misleading advertising. While the aspect of truth in labeling is laudable, I don't believe that the vast majority of consumers of these types of beverages will notice or care about the difference. As consumers, generally we are concerned with the end product; I make this statement from the perspective of a consumer. And with particular respect to alcoholic beverages in general I don't believe that many consumers review the labels of their favorite alcoholic beverage prior to purchasing or consuming to determine the source of the alcohol contained within. I am of the firm belief that consumers who drink have a certain threshold of experience and based on that experience they make their decision on what to purchase on how it will taste or meet their selection criteria otherwise. Likewise, it would seem a bit far-fetched to imagine a potential new consumer of a flavored malt beverage of the type this rule proposes address asking their self the question, "I wonder what percentage of the alcohol contained in this was derived from distilled spirits". The change in status from being treated as a distilled spirit instead of a malt beverage will disproportionately increase the price of these beverages to the consumer.

The NPRM notes the increased popularity of flavored malt beverages, specifically the NPRM states that flavored malt beverage constitute as much as 5% of the market for the sale of malt beverages. I am concerned that the TTB is using this proposed rule to reclassify flavored malt beverages as distilled spirits so that according to the Internal Revenue Code ("IRC") they may be taxed at a higher level. According to information contained in the notice for proposed rule making ("NPRM"), the TTB has been aware of distilled spirit additives in flavored malt beverages for some time. In 1996 the TTB adapted rules establishing alcohol content volume limits for distilled spirit additives for malt beverages with an alcohol content by volume of more than 6%. It would have seemed that if the TTB was concerned with reclassifying flavored malt beverages as distilled spirits this would have been the operative time to do so. However, they did not choose to do so. To me it seems that the TTB has decided to take advantage of this noted increase in popularity of flavored malt beverages to increase the nation's revenues and while the government should be allowed to receive just revenues from these traditional sources, to increase the tax through reclassification because an item has become more popular seems less than equitable. Taking an analogy to the extreme there has been a significant increase in the popularity of compensating corporate executives over the past ten years, why not create a new tax bracket for them?

The most significant consequence of this NPRM will be reclassification of these products to the effect that they will be considered distilled spirits which will in turn allow the Internal Revenue to tax these items at a higher rate which in turn result in higher prices to consumers. The basis that the TTB uses to come to the conclusion that the flavored malt beverages in question should be treated as and taxed as distilled products while not seeming arbitrary seem somewhat attenuated based on the language that they use from the Internal Revenue Code. The TTB has decided that any flavored malt beverage that derives in excess of .05% alcohol content from distilled spirits, should be treated as distilled spirits. Under the NPRM, this means that flavored malt beverages, which generally have a alcohol content between 4% and 6%, will taxed the same as beverages that have an will be taxed at the same rate as a bottle of rum with an alcohol content of 40% - this does not seem right. The increase in tax for these beverages will be passed on to the consumer.

An additional consequence of treating these beverages as distilled spirits would mean that they could not be produced were they are currently produced. For reasons not related to public health or safety the IRC regulations require different production facilities for beer/malt type beverages and distilled spirits. Again, the additional cost of production will be passed on to the consumer.

Summary statement

In sum, I believe that the TTB is using the guise of public health and truth in labeling as a pretext to increase the tax on flavored malt beverages and based on this belief I feel the NPRM should not be passed.